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Law and practice of international commercial arbitration with a special reference on the Jordanian law

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Abstract
The study aim to investigate and explore the law and practice of international commercial arbitration with a special look on the Jordanian law. The study comes because arbitration has become a recognized phenomenon in the international trade balance. This has led to the existence of the arbitration clause in international commercial contracts if it has been given attention by international conventions as well as national legislation. The study review the literatures related to international commercial arbitration. Theses literatures indicated that interest in arbitration is reflected in its national and international organization and in the proliferation of regional and international arbitration centers also these literature reported that judicial have to elaborate for international commercial arbitral tribunals. The Jordanian arbitration law nor the civil law includes rules that identify the law applicable to the arbitration agreement. The researcher didn't find any judicial opinion reached through discretion that identifies the law to be applicable on such agreements.

Keywords: law, arbitration, disputes, UNCITRAL, arbitration agreement

1. Introduction
Interest in arbitration has grown as a means of resolving civil and commercial disputes for various reasons. Thus, international economic relations between individuals have grown, which in turn has led to the emergence of a "global community with its own entity", an international business community with its own needs, including the application of rules that are compatible with international trade relations that may be incompatible with national legislators and judges [1]. Arbitration is the oldest means that human resort to it to resolve the disputes that arise between him and his peers; it is known since the beginning of human civilization, and then, arbitration has become the most important means that traders in international trade resort to resolve their disputes [2].

Because of the acceleration of economic growth and the development of international relations, especially in the field of trade, it made the commercial arbitration the focus of attention of States and international and regional institutions that rushed to implement and organize; the turnout to it has been made by the contracting parties in the international field especially to resolve their disputes [3].

The jurisdiction of the State shall include the courts in which the citizen shall be entitled to exercise his or her right to have access to his or her natural judge, where the citizen is not supposed to resort to those courts, bringing his opponent to the arena to fight an attack and defense [4].

1.1 The study problem
Arbitration has become a recognized phenomenon in the international trade balance. This has led to the existence of the arbitration clause in international commercial contracts if it has been given attention by international conventions as well as national legislation. This study attempts to study the subject of international commercial arbitration. The problem of the study is the following question: What is the law and practice of international commercial arbitration with a special look on the Jordanian law?

1.2 Significance of the study
The importance of the study due to growing importance of international trade, and complicated problems, so that the interest of trying to search for solutions to legal problems of concern to researchers and legislators in various countries, both at the national level or at the international level has become, and became the international trade community, supported by international organizations and commercial entities, seeking to Create uniform rules governing international trade, regardless of the nature of the economic system prevailing in a country. Hence, the importance of the role of arbitration as a means of adjudicating commercial disputes to play an important and important role in the settlement of disputes in view of the advantages and benefits it offers to litigants has made the resort to it increasing continuously, especially that the opponents agree in advance to consent to arbitrators and not to object to their decision. There is a need to study the issue of international commercial arbitration in the economic environment in Jordan, the fact that Jordan now lives a large investment movement, and openness to international markets, which constitutes the importance of all parties to deal with the international commercial arbitration and arbitration centers at the national level and the international level.

1.3 Literature review
Bwasalsal (2015) [1] showed that although individually each settlement adjustments will replace the study of certain specificities, but their rules are compatible with developments in international trade developments. The pressure practiced by

international organizations in order to modernize the arbitration led to the development and proliferation of rules at the global level. The adoption of the revised arbitration settlement of the United Nations Commission on International Trade Law, which was established by United Nations General Assembly in order to encourage the progressive harmonization and unification of international trade law best proof of that. Rasheed & Anbari (2015) showed that the arbitration enjoys several advantages make it a haven to turn to the contracting parties in terms of its flexibility in the form that is best suited to the nature of disputes investment contracts, especially since this contracts that they need to be characterized by a long period of time to be implemented.

Salem (2015) reported that the importance of drafting the arbitration conditions in international trade disputes, the major arbitral institutions to incorporate a typical arbitration clause in their rules, so that the parties can be guided by him, and his writing as he is in their contracts, to ensure the integrity of the arbitration proceedings, and to reach a final judgment properly. Wilson (2014) reported that these principles reflect the basis of the UNCITRAL Model Law on International commercial arbitration 1985, the New York Convention 1958 and many modern Arbitration Laws.

Batosh (2014) found that the use of administration to arbitration in administrative contracts is contrary to the fundamental constants upon which the common law, and contrary to the principle of state sovereignty, and is contrary to the fundamental management contracts, as well as longer Principles an assault on the jurisdiction of the administrative court. The statement Jordanian legislator's position on arbitration in administrative contracts where the unresolved dispute over the extent of passport recourse to arbitration in administrative contracts in the current arbitration law. Mujic (2013) reported that corruption in general and in arbitration is known as a universal principles because it disrupt trade, the study reported that corruption negatively affects the international arbitral procedure for example a main contract, which is tainted by corruption, because "It is not the arbitrator's role to engage into investigations of criminal offences".

Monteiro, M. (2013) reported that "legal background of the juranovit curia principle involves a rather delicate balance between inter alia the principle of party autonomy, inherent to the consensual nature of commercial arbitration, and the procedural freedom of an arbitral tribunal arising from its substantial case management powers". Heafe (2013) found that these texts, both those contained in the Civil and Commercial Procedures Law, or in the Kuwaiti Arbitration Act, is suitable for the application of the arbitration-mail, and it has to be re-considered, or issue a special law arbitration-mail in the Kuwaiti legislation commensurate resolution of disputes, e-commerce by this means.

Al-Rubaie (2013) study showed that it cannot be documented mail arbitration in e-commerce contract decisions by traditional signature, which does not fit with the electronic environment, and therefore has been the use of electronic signature for electronic authentication arbitration to make sure to follow the decisions secure procedures by the competent authority ratification electronic state certification, that the electronic signature has been implemented by the arbitrators or the parties to the conflict by means of analysis to identify the symbols and words and numbers and decryption or any other means documented mail arbitration decisions. Al-Qahtani (2012) indicated that arbitration in commercial disputes important advantages which outweigh the disadvantages and especially its investments. Sharman (2012) study showed that arbitration is a sort of private justice, in which the parties to the conflict of their own free wills free choice as a way to resolve exceptionally outstanding disputes between them.

1.4 The concept of international commercial arbitration

The issue of "arbitration" has been gaining great attention on different levels. For instance, on the international level, there were many international conventions concluded regarding this issue. On the jurisprudential level, this issue has gained great attention by jurists. This issue has also gained the central attention of researchers, and thus, there are many publications written about it. There are also many scientific institutes that are concerned with it and give it attention. Furthermore, there are many international organizations and institutions – concerned with arbitration –that have participated in setting specific rules for the procedures followed when conducting the process of arbitration. In addition, many countries used to have laws that were concerned only with dealing with the issues of "internal arbitration". Thus, such countries have issued new laws which are concerned with the dealing with the issues of "international arbitration". Due to the significance of arbitration in the international community, the International Law Commission of the United Nations (UN) has set specific rules for arbitration. In the present time, we can notice that the rules and procedures of arbitration have been fully developed relatively [5].

Arbitration is a complex system which nature is considered duplicate. It is a process that is based on the basis of mutual consent. To illustrate, the arbitrator obtains his authorities from all the parties 'consent. The nature of the arbitrator's job is considered judicial. For instance, although the arbitrator is not a judge, he performs the same task that is assigned to the judge to perform. This task is represented in settling disputes that are submitted to him through issuing an arbitral award to settle them. The arbitral award issued by an arbitrator must be treated as a court's decision. Thus, that means that these awards are subjected to the appealing process through the legal procedures of appealing [6].

1.5 Definitions of international commercial arbitration

There were several definitions set for the concept of "arbitration" on the jurisprudential level. For instance, there are people who defined this concept as being a method that parties resort to in order to settle the disputes arising from the contract, whether such disputes were settled by one person, or a group of people. Such people are called arbitrators and such method is done without resorting to the judicial system (Sami, 1992). There is another definition that has been set for the concept of "arbitration". For instance, it has been defined as being a system used for settling disputes through natural people chosen by the dispute parties whether directly or in any other method they both agree on it. It can be also defined as enabling the dispute parties to settle their disputes by natural

people chosen by them away from the courts of law that are authorized to settle such disputes in accordance with the law [7].

Although there are definitions for "arbitration" in jurisprudence and legal provisions, it is difficult to set a standard definition for "international commercial arbitration". That is because the procedures followed in the arbitration processes can vary from one country to another. For instance, it varies what is considered international and when arbitration is considered international. We can also notice that each country has its internal provisions and standards of its own which are responsible for regulating the "commercial arbitration process". Thus, we can define "commercial arbitration" as being the agreement of parties to resort to the arbitration process to settle the disputes that have risen or may arise between them in relation to their commercial international relationship [8].

Arbitration is also defined as being the parties' agreement to submit their dispute to natural people chosen by them. Other jurists have defined the concept of arbitration as being the agreement of the concerned parties to submit their dispute to people chosen by them so that such dispute becomes subjected to the decision (arbitral award) issued by them [9].

2. International Trade Agreements

The necessity of having the process of commercial arbitration has been increasing due to the increasing size of commercial transactions and the increasing problems and controversial matters that are associated with them. This need has been also increasing due to the use of information and communication technologies in the procedures of transactions of various kinds and stages. The scope of using international commercial arbitration has been increasing due to the increasing number of disputes arising from the contracts of: commercial transactions, intellectual property, and sales. Thus, arbitration became a method used for the aims of settling disputes that arise from commercial transactions. It became so due to the increasing size of transactions and that makes it difficult for judicial systems to settle and deal with this huge number of disputes. Thus, the dispute parties started resorting to alternative methods that can help them in obtaining their rights. Such alternative methods may include the method of arbitration. Hence, many international agreements and conventions have been concluded in the aim of regulating the processes of arbitration and enforcing arbitral awards. Such international agreements and conventions may include: the New York Convention of 1958 (also called the Convention on the Recognition and Enforcement of Foreign Arbitral Awards). Such international agreements and conventions may also include: the United Nations Commission on International Trade Law (UNCITRAL) which issued the UNCITRAL Model Law on International Commercial Arbitration in (1985). All of that have participated in increasing the number of arbitrators, and arbitration bodies and centers [10].

3. International commercial arbitration courts

International arbitration is considered to have great special significance. During the recent decades, many countries and bodies have resorted to its processes due to the benefits gained from them and that has participated in increasing the significance of international arbitration [11]. The arbitration proceedings usually start when requesting to conduct the arbitration process by the disputed parties based on a contract that was concluded between them. After both parties decide to resort to arbitration, they must appoint qualified efficient arbitrators–on the basis of a mutual agreement –for the aim of settling the concerned dispute. The arbitration court usually consists of three arbitrators. It should be also noted that many tribunals have been formed in accordance with the rules issued by the United Nations Commission on International Trade Law (UNCITRAL) and the UNCITRAL Model Law on International Commercial Arbitration. For instance, article no. (5) States that the arbitrators must be appointed by a mutual agreement reached by both parties willingly. However, if there was no prior agreement upon that and both parties couldn't reach a mutual agreement about that within 15 days since the day on which the defendant has received the writ of starting the arbitration proceeding, then the tribunal shall consist of one arbitrator. According to the arbitration rules that are adopted by the International Chamber of Commerce, the arbitration tribunal may consist of one or three arbitrators. As for the arbitration rules of the London Court of International Arbitration, the arbitration tribunal may consist of one arbitrator or several ones and the disputed parties are entitled to suggest the names of the arbitrators. However, the president of the latter court or his deputies the one who shall issue the judgment that shall settle the dispute [3].

4. Arbitration Agreement

The importance of examining the interpretation of an arbitration agreement is to determine its scope in terms of subject matter, taking into account the verification of the consent of the parties, since no one is required to arbitrate except on the subject which has been accepted by referring it to arbitration. But the arbitration agreement may have ambiguity about its scope. For example, an agreement to refer "all disputes arising out of the execution of a contract" is not entirely clear in terms of the extent to which it covers disputes concerning the validity, dissolution or interpretation of the contract [1]. However, supporters of the expanded interpretation of the arbitration agreement see that their position is not inconsistent with the arbitrariness of arbitration. Rather, the reasonable interpretation of the will of the parties is that they have implicitly tended to refer all their disputes to arbitration rather than to divide them between the judiciary and arbitration [12].

The arbitration agreement, the true arbitration agreement, the judiciary raises his hand on the decision, and returns the jurisdiction and status of this arbitral tribunal. However, if the state's jurisdiction is violated, the jurisdiction of the state's jurisdiction will be restored to the consideration of disputes between individuals, rather than the arbitral tribunal [13].

5. Results & Discussion

5.1 Commercial arbitration in Jordan

The Jordanian Commercial Arbitration law No. 31 of 2001 doesn't provide any definition for (arbitration) nor for (the arbitration agreement). However, the latter law identifies the arbitration agreement requirements that should be fulfilled to consider it as a valid agreement. As for the repealed

arbitration law No. 18 of 1953, it defines (the arbitration agreement) as being a written agreement in which the parties agree on subjecting the current or future cases of dispute to the arbitration process [14].

As for the Jordanian court of cassation, it defines arbitration as being an exceptional method sought for settling disputes and it's based on the joint will of the arbitration agreement parties. The court shouldn't expand in interpreting the contract that includes the arbitration clause which identifies the kind of disputes that shall be subjected to arbitration. Arbitration is considered a procedural guarantee that is sought for settling the investment-related disputes. It is also sought by the parties of the investment contract based on the agreement they have concluded. The arbitration agreement may be in the form of a clause that is listed in the investment contract before the occurrence of the dispute. The arbitration agreement may be also in the form of a separate agreement that is concluded before or after the occurrence of the dispute. The arbitration agreement or clause aims at settling the dispute without any procrastination through issuing a final binding arbitration award that puts an end to the concerned dispute [15].

The Jordanian government has been giving much attention to the legal laws and regulations governing the arbitration process in Jordan. Such attention can be seen through modifying the local arbitration laws, and endorsing international arbitration conventions. However, the developments that the international commercial arbitration process went through led to the emergence of new issues and matters that was not dealt with by the Jordanian arbitration law nor by any of the relevant international arbitration conventions. In addition, the Jordanian judiciary did not deal with these matters and issues. However, there are arbitration-related principles that the Jordanian court of cassation has recognized and can be used to identify the Jordanian judiciary's attitude towards such matters and issues.

On 16 / 07 /2001 the Jordanian government issued the Jordanian commercial arbitration No.31 of 2001. This law was published in the official newspaper in its issue No. 4496 on page 2821. In addition, Jordan endorsed several international conventions. The most important ones include: the New York Convention of 1958 (i.e. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards). Such important conventions also include: the Washington Convention of 1965 (i.e. the Convention on the Settlement of Investment Disputes between States and Nationals of Other States) and the Amman Arab Convention on Commercial Arbitration of 1987.

As for the issues and matters that are related to the international commercial arbitration and emerged recently, they include the idea of not subjecting the arbitration process to any national law. By that, the researcher means not to enforce any national law on the arbitration agreement, its procedures and subject. Instead of enforcing the national law, the arbitration agreement may be subjected to rules derived from the international commercial law and the parties' joint will. As for the arbitration procedures and subject, they may be subjected to rules that don't belong to any national law, and they're chosen by both parties. Based on the idea of not subjecting the arbitration process to any national law, the arbitration award shall not be subjected to any national law. Hence, it's useless to file a lawsuit claiming the annulment of the arbitration award because such award is not subjected to the national law of the concerned country. For instance, such an award obtains its validity from the international commercial law and parties' agreement [1].

6. Conclusions

The Government shall prepare an arbitration law, which shall take the most recent texts in the laws of the State relating to arbitration, with the guidance of the Model Law on International Commercial Arbitration prepared by the United Nations Commission for the year 1985 and amended in 2006, taking appropriate provisions of our legal system with some modifications and additions fits the reality of economic policy. To provide legal information security for transactions conducted through the Internet and to improve and develop it and to use modern techniques and sophisticated to maintain the physical presence of electronic editors and electronic signature. The competent authorities and interested in electronic arbitration should prepare studies and research on electronic commerce and transactions and digital contracts and their relationship to electronic arbitration. The application of new principles and solutions in the field of international commercial arbitration through the jurisprudence of the Jordanian judiciary because they do not conflict with the provisions of the Jordanian Arbitration Law. Organizing arbitration within the framework of regional and international institutions as a procedural guarantee for investors and an encouraging factor for investment in Jordan.

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